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In re Application of
Jacob Wohlstadter
Application No. 09/698,586
Filed: October 27, 2000
Attorney Docket No. W0538/7003 TJO

: **OFFICE OF PETITIONS**
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: **DECISION ON PETITION**
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This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 29, 2009, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37CFR 41.20(b)(2) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed June 2, 2008, and no extension of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.1997(b). As no claim was allowed, the application became abandoned on August 3, 2008. See MPEP 1215.04.

There is no indication that the person signing the petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37CFR 1.34(a), the signature of Steven J. Henry appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53; (2) the petition fee of \$810; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No.12/322,177.

In addition to receiving the petition, the United States Patent and Trademark Office received a payment of \$1,175 for a five month extension of time on January 29, 2009.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1,175 extension of time fee was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to the petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Denise Williams at (571) 272-8930.

Andrea Smith
Petitions Examiner
Office of Petitions